No. 80-1388

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1980

Edgie Keller, et.al.,

Petitioners,

v.

State Bar of California, et.al.,

Respondents.

On Writ of Certiorari to
The California Supreme Court

Motion For Leave To File Amicus Curiae Brief

And

BRIEF OF AMICUS CURIAE

Joseph M. Little
Amicus Curiae
Admitted January 9, 1979
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4988

No. 88-1905

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Pursuant to U.S. Supreme Court Rule 36.3, 28 U.S.C.A., Applicant for leave to file an amicus curiae brief submits the brief bound herewith and states:

1. Petitioners Keller et. al. granted written consent for applicant to file this brief, but Respondents State Bar of California et. al. declined to consent.

2. The nature of applicant's interest is stated on page 1 and 2 of the brief, infra.

3. A statement the questions of fact and law, relevance and reasons to believe they will not be adequately addressed by the parties is included as the last paragraph describing the nature of the applicant's interest, infra. p.2.

Respectfully submitted,

Joseph W. Little 11/14/79

Joseph W. Little,
Applicant
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INTEREST OF AMICUS CURIAE

Amicus curiae Joseph W. Little files this brief in support of petitioners, KELLER, et.al.

Amicus Curiae is a member of The Florida Bar and the Bar of this Court. He is also professor of law at the University of Florida College of Law where he has taught law for 22 years.

Amicus curiae believes that modern integrated bars are becoming more prone to use integration rules and laws to press all lawyers into modes of political thought and action that are preferred by bar elites and those in control of the bars' decision processes. Amicus curiae further believes that the modern realities of law practice shift massive power to lawyers in large firms

and the relatively few with secure economic bases, and away from the many lawyers who practice in mundane circumstances and those few free spirits who choose to practice alone or in small groups. Amicus curiae believes that measures such as that imposed upon Eddie Keller et.al. in the decision below have the potential and tendency to drive the most independent and bravest lawyers out of the bar, or to dull their ardor with enforced conformity. If this proves true, the consequential systematic changes in the composition of the bar will make it more difficult for the bar at large to continue to produce the fearless advocates that have always come forward to champion unpopular and profitless causes in a manner that preserves and extends individual American freedoms. One of the central purposes of the First

Amendment is to foster and preserve these qualities of fearlessness and zeal.

Amicus curiae participated as amicus curiae in current proceedings in the Eleventh Circuit Court of Appeal (case #89-3388) against The Florida Bar by Robert E. Gibson, and in similar proceedings in the Supreme Court of Florida. See, Re Thomas R. Schwarz, ____ So.2d ____, 1989 WL 128593 (Fla.).

From a review of the petition for writ of certiorari granted by this Court, amicus curiae believes this brief's examination of the relationship between a state bar and its members is broader than will be made by the parties. Amicus curiae believes this larger scope will assist the Court in defining the true nature of the relationship between the two and explaining to the State Bar of California why the rules objected to by Keller

et.al. are both unconstitutional under the First Amendment and extremely unwise.

SUMMARY OF ARGUMENT

Keller v. The State Bar of California, 255 Cal. Rptr. 542 (Cal. 1989) holds that the California State Bar is a governmental agency and, because of that status, is not required to accommodate the objections of its members who dissent on First Amendment grounds to the use of compelled dues to support ideological and political lobbying activities which they oppose.

The prime error of Keller is its ipse dixit conclusion that state agencies need not concern themselves with First Amendment objections irrespective of the relationship between the governmental agency (e.g. the State Bar) and the objectors (e.g. lawyers who are compelled to be members). Keller

blithely justifies its holding by reference to a California decision involving persons who are forced to accept a condition they don't like as the price of receiving a state benefit, and another California decision involving general taxpayers who object to the political activities of a state agency. Keller pays no heed to how dramatically different the facts of Keller are from the earlier cases, even if they should be correct in their own terms.

Petitioners Keller et.al. are not mere beneficiaries of a state gratuity, nor are they general taxpayers. Moreover, as the following analysis demonstrates, neither are Petitioners employees of the State Bar nor are they officers of the State in any sense that diminishes their constitutional rights.

Instead, Petitioners are practitioners of a lawful profession in pursuit of a livelihood, which is a matter of right under the Constitution of the United States of America according to many decisions of this Court. The true relationship between the Bar and its members, therefore, is one of regulator (the State Bar) and regulatee (its compelled members).

Numerous decisions of this Court have held that a state agency may not use its regulatory powers to infringe the First Amendment rights of regulatees in the absence of demonstrating that the infringing action is narrowly tailored to satisfy a compelling state interest. See Wooley v. Maynard, 430 U.S. 705 (1977) and Pacific Gas & Elec. v. P.U.C. of California, 475 U.S. 1 (1986). Moreover, this Court has specifically held in

Abood v. Detroit Board of Education, 431 U.S. 209 (1977) and Chicago Teachers' Union v. Hudson, 475 U.S. 292 (1986) that individuals who are forced by governmental regulators to associate with organizations as a condition of earning a livelihood may not be compelled to pay for political and ideological lobbying activities that they oppose. This is exactly the infringement that Petitioners protest.

This brief demonstrates that the Keller decision has neither stated nor justified a compelling state interest for the disputed ruling, and that the disputed ruling is not narrowly tailored. Indeed, Keller specifically calls for a broad application of the State Bar's powers irrespective of the First Amendment rights of dissenters.

The decisions of this Court demonstrate that the status of lawyer qua lawyer does not

justify a lower standard of constitutional protection than the constitution affords other occupations and professions. Hence, Keller is wrong in law and must be reversed. Moreover, Keller is extraordinarily poor policy. Its effect could be to deprive the bar and the nation of the few zealous advocates endowed with the spirit of independence and fearlessness who have always emerged when needed to undertake unpopular and dangerous representation, and to enrich the bar with satisfied conformists to whom principle is secondary to getting along with their careers.

ARGUMENT

Keller v. The State Bar of California, 255 Cal. Rptr. 542 (Cal. 1989), is an egregiously bad opinion because it wholly fails to acknowledge that lawyers, no matter

what the status of the bar organization the State of California requires them to join as a condition of receiving a license from the State to practice law, retain the right under the First Amendment not to be compelled to contribute money to support political or ideological lobbying on issues that are not central to the interests served by compelling membership in the Bar. The Supreme Court of California reached this untenable position by first ruling that the State Bar of California is "analogous to a governmental agency" (255 Cal. Rptr. 547-551) and, concluding from that, that the relationship between the Bar and its lawyer members is not controlled by the labor union line of cases including particularly Abood v. Detroit Board of Education, 431 U.S. 209, 97 S.Ct. 1782, 52 L.Ed. 2d 261 (1977). In the process, the

California court distinguished cases that had applied Abood on the ground that they were not germane to the unique bar organization in California. See, e.g., Gibson v. The Florida Bar, 798 F.2d 1564 (11th Cir. 1986), distinguished at 255 Cal. Rptr. 542. From this analysis, the California Supreme Court further concluded:

> If the bar is considered a governmental agency, then the distinction between revenue derived from mandatory dues and revenue from other resources is immaterial. A governmental agency may use unrestricted revenue, whether derived from taxes, dues, tolls, tuition, donations, or other sources for any purposes within its authority.

255 Cal. Rptr. 542 (Cal. 1989).

Once it had so decided, the court thereafter ignored the First Amendment beyond referring to two California court of appeal

decisions both of which, if correct, are plainly distinguishable from this case. Erzinger v. Regents of University of California, 187 Cal. Rptr. 164, certiorari denied 462 U.S. 1133, involved the use of dues that students of the University of California are compelled by the State to pay. Erzinger held that the State might use the compelled dues for purposes that the dissenters opposed on ideological grounds. Erzinger is probably wrong, see, e.g., Galda v. Rutgers, 772 F.2d 1060 (3d Cir. 1985) cert. denied, 475 U.S. 1065, 106 S.Ct. 1375, 89 L.Ed. 2d 602 (1986) (holding that a university's requirement that students contribute to a nonpartisan student lobbying organization violates the First Amendment), but in any event the State of California does not force a student to attend the University

of California in order to get an education in that state. Other educational alternatives exist. By contrast, Eddie Keller and others must join the State Bar of California before the State of California will permit them to earn a livelihood practicing law in that state.

The California Supreme Court also referred to Miller v. California Com'n on Status of Women, 198 Cal. Rptr. 877 (Cal. App. 3 Dist. 1984), appeal dismissed 469 U.S. 806, which involved a taxpayers' action seeking to stop the legislative lobbying activities of a governmental commission on the status of women. Miller denied relief despite the fact that the commission received tax revenues to support activities that the dissenters opposed on ideological grounds. Miller, too, may be wrong, but, in any event,

the effect upon the individual general state taxpayer of having to support governmental activities which he opposes is far less concentrated and direct than the effect suffered by Eddie Keller and others of being compelled to pay dues directly to a state agency as a condition of earning a livelihood in the law.

The fault of the California Supreme Court's Keller decision is that it fails to examine and describe the nature of the relationship between the State Bar of California and members of the bar. Denominating the State Bar as a governmental agency is the beginning, not the end, of the required analysis. Consequently, Keller failed to acknowledge the limits the United States Constitution places upon the power of the State to condition the relationship. By

referring to Ersinger and Miller the court denied the labor union - employee relationship, but implicitly and alternatively likened the relationship to that of a voluntary recipient of a governmental benefit to the State (i.e. student at state university) and to that of a general taxpayer of the State. The California court completely ignored the fact that the relationship between lawyer and the bar is entirely different from any of these.

Although the State of California has wide discretion in defining legal relationships in California, the conditions it imposes upon them may not violate rights guaranteed individuals by the United States Constitution. In the absence of any state law, citizens of California, as citizens of the United States, would be freely permitted

to practice law in that state without State encumbrances. Nevertheless, the State of California has not left this field unregulated. As long ago as 1863, the Supreme Court of California stated, "The practice of law is a privilege to which the Legislature may attach such conditions as it may deem proper, and a breach of the condition is a forfeiture of the right." Cohen v. Wright, 22 Cal. 297, 321, 322 (1863). Cohen also held that "the occupation of a lawyer is not an 'office'." (e.s.) Id. at 322. The issue raised by Keller is whether the State may impose the condition upon the "occupation of a lawyer" that a practitioner must provide money to a state agency to permit it to engage in political and ideological lobbying activities the practitioner opposes. For the answer to that question, we must look to the

United States Constitution and the decisions of this Court.

This Court has often endorsed "the undeniably correct premise that a State may not arbitrarily refuse a person permission to practice law." Cohen v. Hurley, 366 U.S. 117, 122, 81 S.Ct. 954, 958 (1961), overruled, Spevack v. Klein, 385 U.S. 511, 87 S.Ct. 625 (1967). Indeed, at seeming odds with the California Cohen v. Wright decision, this Court has specifically held, "The practice of law is not a matter of grace, but of right for one who is qualified by his learning and moral character." Baird v. State Bar of Arizona, 401 U.S. 1, 10, 91 S.Ct. 702, 707 (1971). See also Ex Parte Garland, 71 U.S. 333, 379 (1866), wherein this Court described the right as one of which a lawyer "can only be deprived by the judgment of the Court, for

moral or professional delinquency." And, in Supreme Court of N.H. v. Piper, 444 U.S. 193, 105 S.Ct. 1272, 1277, 62 L.Ed. 2d 355 (1979), this Court stated "that the opportunity to practice law should be considered a 'fundamental right.'"

Given this status, this Court has stated that a state may not "exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment." Schware v. Board of Bar Exam. of State of N.M., 353 U.S. 232, 238, 77 S.Ct. 252, 756 (1957). Moreover, any encumbrance imposed by the State must satisfy a legitimate State interest and must not deny a federally protected right. In re Griffiths, 413 U.S. 717, 93 S.Ct. 2851, 37 L.Ed. 2d 910

(1973). On the other hand, the State may and has employed its police powers to qualify that right to protect the interest of the public. See e.g., Baird v. State Bar of Arizona, 401 U.S. 1, 91 S.Ct. 719 (1971). These qualifications, however, are police powers' conditions on the United States constitutional rights of the citizens of California to engage in a profession within the state and are not welfare or other benefits provided as a matter of grace from the State. Hence, the welfare or state beneficiary analogy Keller drew to Erzinger, to the extent the latter decision is otherwise sound, fails and must be rejected.

Similarly, the taxpayer - state relationship of Miller must also be rejected. Petitioners herein do not complain as general taxpayers about an imposition that all

taxpayers bear, but they complain as members of a profession as to a non-tax imposition that they alone are required to pay as a condition of earning a livelihood in the practice of law. Hence, it is not enough for the State to conclude that bar dues become state funds to be spent as any other state funds, as the Supreme Court of California held, 255 Cal. Rptr. at 542, but inquiry must also be made as to whether the process by which the dues are imposed violates the First Amendment rights of dissenters.

Two relationships left unexplained by the decision below are the State Bar as employer and lawyer members as employees, and the State Bar as regulator and members as regulatees. Nothing about the Bar-lawyer relationship supports a determination of an employment relationship. As noted above, the

California Supreme Court has referred to the practice of law as an "occupation." And as for this Court, it has long held that the common appellation of a lawyer as an "officer of the court" does not place "attorneys in the same category as marshalls, bailiffs, court clerks or judges." Cammer v. United States, 350 U.S. 399, 405, 76 S.Ct. 456, 459 (1956). Instead, this Court has said, "unlike these officials a lawyer is engaged in a private profession, important though it be to our system of justice. In general he makes his own decisions, follows his own best judgment, collects his own fees and runs his own business. The word 'officer' as it has always been applied to lawyers conveys quite a different meaning from the word 'officer' as applied to people serving as officers within the conventional meaning of that term." Id.

Further, this Court has said, "It is no less true than trite that lawyers must operate as a three-fold capacity, as self-employed businessmen as it were, as trusted agents of their clients, and as assistants of the court in search of the truth." Cohen v. Hurley, supra, 81 S.Ct. at 958. As succinctly summed up by Mr. Justice Fortas, "But a lawyer is not the employee of the State. He does not have the responsibility of an employee to account to the State for his actions because he does not perform them as agent of the State." Spevack v. Klein, 385 U.S. 511, 529, 87 S.Ct. 625, 630, 17 L.Ed. 2d 574 (1967) (Fortas, concurring). Finally, Ferri v. Ackerman, 444 U.S. 193, 100 S.Ct. 402, 62 L.Ed. 2d 355 (1979) makes the point in the most telling terms. In Ferri, this Court held that even a lawyer appointed by a state court to defend

an indigent person is not an employee of the state and hence has no judicial immunity to a malpractice action brought against him by his former client. As this Court said in Ferri, "an indispensable element of the effective performance of [the lawyer's] responsibilities is the ability to act independently of the government and oppose it in adversary litigation." 100 S.Ct. at 409. A fortiori, the Supreme Court of California's denomination of the State Bar as a "governmental agency" has not deprived a member of the bar "of his responsibilities to act independently of the government and oppose it in adversary litigation." In short, it has not created an employment relationship between members of the bar and the State Bar. But even if the conclusion were otherwise, this Court's decision in Branti v. Finkel,

445 U.S. 507, 100 S.Ct. 1287, 63 L.Ed. 2d 574 (1980) and other cases would deny the Bar the power to exact money from its employees as a condition of employment to pay for the Bar's ideological lobbying.

This analysis leaves only the regulator - regulatee relationship as the true legal relationship between the State Bar and its members compelled to join it as a condition of practicing law in the state. In this regard, the governmental agency that is the California State Bar must not be permitted to arrogate to itself the personality of the legal profession at large or the high and noble accomplishments of lawyers in society. Thus, the capacity of lawyers to speak out on public issues before state legislatures and elsewhere is not and has never been dependent upon the words or grace of a governmental

agency called the State Bar; nor have lawyers ever been dependent upon a governmental agency called the State Bar to represent the poor and unpopular even against the states themselves. Thus, any plea that a State Bar gives "voice" to lawyers must be rejected as factually and historically unsound (and currently so as evidenced by the facts that numerous states operate without integrated bars and that several of the integrated bars eschew legislative lobbying) and politically foreign to our mode of governance under the Constitution of the United States of America. In other words, the State may not bootstrap itself into the role as a "voice of lawyers" by making a finding that the state has a need to have lawyers speak out in solido on public issues and, then, require all lawyers to pay money to support the particular view of what

lawyers ought to be saying that is espoused by the State Bar. It is exactly this sort of bootstrapping that the Supreme Court of California committed in Keller. See, particularly, 225 Cal. Rptr. 552, 553. Contrary to this erroneous view, a lawful regulator of a fundamental right of the regulatee must tailor the regulation to narrow and appropriate purposes necessary to protect the public.

It is much too late in the day to maintain, as does Keller, that regulation by a state agency somehow submerges the First Amendment rights of the regulatees to a lesser status than enjoyed by other citizens whose rights the state may not infringe by similar forms of state action. Indeed, in Baird v. State Bar of Arizona, supra, this Court, referring to state regulation of lawyers,

said, "The First Amendment's protection of association prohibits a State from excluding a person from a profession or punishing him solely because he is a member of a political organization or because he holds certain beliefs.... Similarly, when a State attempts to make inquiries about a person's beliefs or associations, its power is limited by the First Amendment." 91 S.Ct. at 706. From that foundation, Baird concluded, "Without detailed reference to all prior cases, it is sufficient to say we hold that views and beliefs are immune from bar association inquisitions designed to bar an applicant from the practice of law." Id, at 707.

Keller, of course, asks an extended question, to wit, "May the State, while not squelching a lawyer in whatever political and ideological views he may individually endorse

and express, nevertheless require a lawyer as a condition of obtaining a license to practice law, support political and ideological lobbying activities of the State that have nothing to do with the narrowly tailored purposes that justify the state's requiring the license, and to which the lawyer dissents?" This is exactly the question this Court left undecided in Lathrop v. Donohue, 367 U.S. 820, 81 S.Ct. 1826, 6 L.Ed. 2d 1191 (1961). Nevertheless, Lathrop foreshadowed this Court's decisions in Abood and Chicago Teachers' Union v. Hudson, 475 U.S. 292, 106 S.Ct. 1066, 89 L.Ed. 2d 232 (1986), and the foregoing analysis demonstrates that those two cases foreshadow the proper disposition of Keller. Indeed, it demonstrates that Keller is fundamentally no different from them.

Amicus curiae will not reargue Abood and Hudson. The only issues here are whether they apply to Keller, and, if they do, whether the State of California has a great enough interest to compel lawyers to contribute to the State Bar's wide ideological and political lobbying activities to require a different outcome. Before arguing that the State has no such interest, and if it does, that it certainly has not narrowly tailored its approach to minimize First Amendment infringement, I will first refer to three recent cases that strongly negative the power of the state in analogous applications. In Wooley v. Maynard, 430 U.S. 705, 97 S.Ct. 1428, 51 L.Ed. 2d 752 (1977), this Court held that a State as regulator may not compel a state licensee to display publicly the State motto "Live Free or Die" when to do so

violated the objector's ideological scruples. Wooley does not place in question the power of the State to require the objectors to obtain and display a license plate for the central public welfare purposes served by licensing; but its holding plainly acknowledges that the State may not bootstrap itself into a power that it cannot exercise directly by attaching its exercise as a condition to one that it can. By the same token, the State Bar cannot bootstrap itself into taxing members for ideological lobbying purposes by adding the tax to the imposition that it can require.

Similarly, in Pacific Gas & Elec. v. P.U.C. of California, 475 U.S. 1, 106 S.Ct. 903, 89 L.Ed. 2d 1 (1986), this Court held that the State of California cannot compel a regulated utility company to distribute

political information that it opposes to its consumers as a condition of conveying its own political views to them. According to this Court, to do so "impermissibly burdens [the complainants'] First Amendment rights because it forces [complainant] to associate with the views of other speakers....[and] the order is not a narrowly tailored means of furthering a compelling state interest." (plurality opinion) 106 S.Ct. at 914. By parity of reasoning, neither can the State of California compel a licensee of the State Bar to provide financial support for the political and ideological views of others with which he disagrees. This is particularly true where the State not only has not narrowly tailored the purposes for which compelled financial support may be used but has also specifically mandated that "In the

context of lobbying and amicus curiae activities [which Keller et.al. object to], this language should be read broadly." Keller, 255 Cal. Rptr. at 552. (e.s.)

Finally, United States v. Frame, 885 F.2d 1119 (3d Cir. 1989), held that the federal government's program to support the beef industry affected beef producers' First Amendment rights to the extent that it required members of the industry to contribute money to pay for an advertising campaign to promote the sale of beef. Emphasizing that the program forbade the use of the funds for any political or ideological purpose other than promotion of the sale of beef, the majority of the court held that the government's purpose in supporting a declining beef industry and the narrowly tailored program justified the resulting infringement

of the complainant's First Amendment rights, which the court saw as only commercial in character. Although I endorse Judge Sloviter's dissenting view that government may not compel a member of an industry to contribute to an advertising campaign for the benefit of a particular industry, the Frame majority clearly acknowledges the essential point in this case. That is, the First Amendment requires governmental regulatory agencies to confine compelled contributions to promote specific and narrow governmental purposes of the agencies and it forbids them to compel regulatees to support wider political and ideological agendas. Keller fails this test.

This, then, brings the Court to the final question. Does the State have some peculiar and compelling interest to serve that

justifies submerging the First Amendment rights of lawyers below those of people in other occupations? I have already shown that the assertion that the State has a compelling interest in the unified weight of the voice of lawyers on some issues won't do. Any so-called unified voice would necessarily be a lie if it purports to be a unanimous opinion. The State has no interest in promoting lies. Moreover, no one has or could make a showing that any matter of concern to the California legislature suffers from a dearth of reasoned and scholarly comment from lawyers representing all points of view. It would be hard to convince an informed and objective observer that a compelled unified voice of lawyers would not be detrimental to free and robust expression, much less could it be persuaded that it was a good thing.

Hence, looking through the lens of close scrutiny, this Court will be unable to find a compelling state interest to justify the disputed imposition.

Is there something on the other end of the regulatory polarity that justifies the imposition? That is, do lawyers by being lawyers concede to the submission of conditions on constitutional rights that are justifiable on lesser grounds than would apply to other occupations? This Court once held that lawyers had a lesser right not to be compelled to testify against themselves than others enjoyed. Cohen v. Hurley, supra. This was done over Justice Douglas' indignant retort that, "There is no exception in the Fifth Amendment for lawyers any more than there is for professors, Presidents, or other office holders." 81 S.Ct. at 974 (Douglas,

dissenting.) Cohen v. Hurley festered for only six years until the Douglas view prevailed and flatly overruled it in Spevack v. Klein, supra. With Spevack this Court cemented the point that any attempt to deny lawyers as lawyers of United States Constitutional rights must be submitted to the same rigorous scrutiny as would be given attempted restrictions of the rights of others. Indeed, in Garrity v. State of New Jersey, 385 U.S. 493, 87 S.Ct. 616, 17 L.Ed. 2d 562 (1967), this point was so well accepted that this Court used the reverse analogy, i.e., "We conclude that policemen, like teachers and lawyers, are not relegated to a watered-down version of constitutional rights." 87 S.Ct. at 620 (e.s.).

From a technical point of view, Spevack and the decisions of this Court referred to

herein, particularly Baird v. State Bar of Arizona, doom the California Keller decision. Nevertheless, a few words should be said as to why Keller is bad policy as well as bad law. Lawyers do have an unusual role in the development and continued preservation of our cherished political freedoms. As this Court once observed, "by virtue of their professional aptitudes and natural interests, lawyers have been leaders in government throughout the history of our country." In re Griffiths, 93 S.Ct. at 2851. Yet this panegyric does not fall fittingly on all lawyers. Most lawyers, like most practitioners of any occupation, plod through careers that are undistinguished by any notable episode of bravery or act of exceptional public service. Still, throughout our history, when the chips are

down some lawyer has come forward to pick up the gauntlet and fight the unpopular or dangerous fight. Members of this Court have often referred to these episodes. Justice Black once reminded us that, "It is to the lasting credit and renown of the colonial bar that Andrew Hamilton, a lawyer of Philadelphia, defied the hostility of the judges, defended and brought the acquittal of [John Peter] Zenger." Cohen v. Hurley, 81 S.Ct. at 968 (Black, dissenting.) Hamilton did the brave act but bar got the credit and fame.

What will be the ultimate effect of a decision such as Keller upon the long run capacity of the bar to uphold this tradition? Will Eddie Keller simply accept the imposition, thus submitting against the weight of the State to the disparagement of

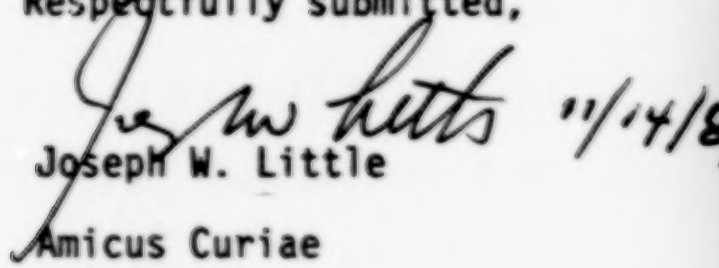
his beliefs? Or will he resign from the bar and make his living in some other occupation? Whatever the outcome, the consequence will be a deflation of the independent fearlessness of the bar. In the future, the bar may be populated by a much greater proportion of pliable conformists and a much smaller portion of fearlessly independent spirits. The bar may be less able and willing to accept the great challenges of freedom. Though the effects would manifest themselves slowly and would be hard to measure, I believe they would surely be detrimental and perhaps dangerous to the future of our country. Alexander Hamilton and Thomas Jefferson had many political disagreements in life, but were they living today, I believe both would be standing with Eddie Keller.

CONCLUSION

In conclusion, amicus curiae asserts that Keller is wrong and urges this Court to reverse and hold that the State Bar of California may not compel its members to pay to support political and ideological activities that they oppose. Furthermore, amicus curiae urges the Court to issue a ruling requiring the State Bar, if it is to continue its practices of political and ideological lobbying, to abide by procedures that Chicago Teachers held to be "necessary" to the protection of First Amendment rights of dissenters; namely, (1) an "appropriately justified advance reduction" of dues for the benefit of dissenters, (2) an escrow of disputed amounts of dues that are paid; (3) a "prompt impartial decisionmaker" as to disputes that are raised about the

appropriateness of the advance deduction; and (4) payment of interest on portions of escrowed dues ultimately refunded to dissenters.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was posted by United States mail to Diane Yu, State Bar of California, 555 Franklin, San Francisco, California 94102, and Anthony Caso, Pacific Legal Foundation, 2700 Gateway Oaks Drive, Sacramento, California 954833.

Joseph W. Little